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**2000 Wis Eth Bd 01**  
**LOCAL CODE - DISQUALIFICATION**

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The Ethics Board advises

(1) that a county board supervisor not participate in discussions or votes about litigation strategy or whether or not the county should sue a business with which the supervisor is associated and should absent himself or herself from that portion of a meeting at which the matter is discussed;

(2) that §19.59 is not an impediment to a county supervisor's participation in decisions affecting the liability of a municipality of which the supervisor is an elected official, but considerations of incompatibility of office, which may be addressed by the Attorney General, may speak to abstention; and

(3) that §19.59 is not an impediment to a county supervisor's participation in decisions affecting the financial interests of a child's spouse, unless the child's family either receives one-half of their support from the supervisor or furnishes one-half of the supervisor's support, but considerations of the appearance of impropriety may lead the supervisor to abstain.

Facts

¶1 This opinion is based upon these understandings:

- a. You are an attorney for a county.
- b. The county may be liable for remediation of groundwater contamination that may have been caused by its landfill.
- c. A number of businesses that deposited or transported waste to the landfill could be liable to the county for remediation costs.
- d. Some county board supervisors or their families own some of these businesses.
- e. Other supervisors are elected officials for municipalities that might also be liable for remediation.
- f. Other supervisors are elected officials for municipalities that have no liability.
- g. One supervisor is a parent-in-law of an heir to a property that may have been contaminated by the county landfill.

### Question

¶2 The Ethics Board understands your question to be:

What restrictions, if any, does §19.59, *Wisconsin Statutes*, impose on these county board supervisors participating in discussions and votes on litigation strategy and whether to seek payments from the above businesses and municipalities with potential liability?

### Discussion

¶3 Three provisions of §19.59, *Wisconsin Statutes*, apply to your question.

¶4 Reduced to its elements, §19.59(1)(a) provides:

No local public official  
May use his or her public position or office  
To obtain anything of substantial value  
For the private benefit of the official  
Or for a member of the official's immediate family  
Or for an organization with which the official is associated.

¶5 Reduced to its elements, §19.59(1)(c)1. provides:

No local public official  
May take any official action  
Substantially affecting a matter  
In which the official, a member of the official's immediate family,  
or an organization with which the official is associated  
Has a substantial financial interest  
Except with respect to modifying a county ordinance.

¶6 Reduced to its elements, §19.59(1)(c)2. provides:

No local public official  
May use his or her public position or office  
To produce or assist in the production  
Of a substantial benefit  
For the official, a member of the official's immediate family,

or an organization with which the official is associated  
Except with respect to modifying a county ordinance.<sup>1</sup>

*Local public official*

¶7 A member of a county board is a local public official subject to §19.59, *Wisconsin Statutes*.<sup>2</sup>

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<sup>1</sup> Section 19.59(1)(a), and (c), *Wisconsin Statutes*, provides:

**19.59 Codes of ethics for local government officials, employees and candidates. (1)(a)** No local public official may use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit of himself or herself or his or her immediate family, or for an organization with which he or she is associated. A violation of this paragraph includes the acceptance of free or discounted admissions to a professional baseball game by a member of the district board of a local professional baseball park district created under subch. III of ch. 229. This paragraph does not prohibit a local public official from using the title or prestige of his or her office to obtain campaign contributions that are permitted and reported as required by ch. 11.

\* \* \*

(c) Except as otherwise provided in par. (d), no local public official may:

1. Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.
2. Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the official, one or more members of the official's immediate family either separately or together, or an organization with which the official is associated.

<sup>2</sup> Section 19.42(7u), *Wisconsin Statutes*, provides:

**19.42(7u)** "Local governmental unit" means a political subdivision of this state, a special purpose district in this state, an instrumentality or corporation of such a political subdivision or special purpose district, a combination or subunit of any of the foregoing or an instrumentality of the state and any of the foregoing.

See 1997 Wis Eth Bd 6, ¶6.

Section 19.42(7x), *Wisconsin Statutes*, provides:

**19.42(7x)** "Local public official" means an individual holding a local public office.

Section 19.42(7w), *Wisconsin Statutes*, provides:

**19.42(7w)** "Local public office" means any of the following offices, except an office specified in sub. (13):

- (a) An elective office of a local governmental unit.

### *Official action*

¶8 Participation in discussions, debates, and votes on county matters is a use of office.<sup>3</sup> Moreover, use of office encompasses the use of confidential information obtained through holding public office.<sup>4</sup>

### *Anything of substantial value or benefit*

¶9 The statute defines “anything of value” to include a favor, service, or forbearance.<sup>5</sup> A decision not to seek payment, through litigation, from a business or municipality that might be liable for remediation costs, is a favor, service, or forbearance of substantial value to the business or municipality. It is also a benefit.<sup>6</sup> This is true regardless of the outcome of litigation because of the costs a litigant can incur in connection with defending a lawsuit. In addition, a decision to pay money to the owner of contaminated land has substantial value if the amount of money at issue is more than a token or inconsequential amount.<sup>7</sup>

### *Substantial financial interest or benefit*

¶10 Similarly, a decision whether or not to seek payment, through litigation, from businesses or municipalities that might be liable for remediation costs, appears to be something in which a potential defendant has a substantial financial interest.<sup>8</sup> Again, this is true regardless of the outcome of litigation. Finally, the owner of contaminated land has a substantial financial interest in whether the county will pay damages.

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<sup>3</sup> 1999 Wis Eth Bd 3, ¶5; 1998 Wis Eth Bd 4, ¶7; 1998 Wis Eth Bd 1, ¶5; 1997 Wis Eth Bd 1, ¶4; 1995 Wis Eth Bd 6, ¶4; 1995 Wis Eth Bd 3, ¶4.

<sup>4</sup> 1994 Wis Eth Bd 4, ¶6.

<sup>5</sup> Section 19.42(1), *Wisconsin Statutes*, provides:

**19.42(1)** “Anything of value” means any money or property, favor, service, payment, advance, forbearance, loan, or promise of future employment, but does not include compensation and expenses paid by the state, fees and expenses which are permitted and reported under s. 19.56, political contributions which are reported under ch. 11, or hospitality extended for a purpose unrelated to state business by a person other than an organization.

<sup>6</sup> The dictionary definition of “benefit” includes “advantage.” The American Heritage Dictionary (1991); Webster’s Ninth New Collegiate Dictionary (1983).

<sup>7</sup> 1997 Wis Eth Bd 15, ¶4; 1995 Wis Eth Bd 5, ¶6; 1993 Wis Eth Bd 8, ¶6.

<sup>8</sup> 1999 Wis Eth Bd 3 (an official should not vote on a proposal that could adversely affect the official’s business by banning a portion of that business resulting in substantial financial consequences); 1998 Wis Eth Bd 1 (extending water and sewer services to an official’s house appears to have substantial financial consequences).

### *Organization with which associated*

¶11 A supervisor is associated with a business if the supervisor or a member of the supervisor's immediate family is an officer, director, or authorized representative or agent of a business, or owns or controls 10% or more of the outstanding equity of the business.<sup>9</sup> A member of a supervisor's immediate family includes the supervisor's spouse, or a child or parent that either receives more than one-half of the his or her support from the supervisor or furnishes more than one-half of the supervisor's support.<sup>10</sup> An "organization" with which a supervisor may be associated within the meaning of the statute does *not* include a municipality.<sup>11</sup>

### *Conclusion*

¶12 Section 19.59, *Wisconsin Statutes*, bars a county supervisor from participating in the decisions about which you have asked if those decisions involve the supervisor's personal financial interests, distinct from the financial interests of county taxpayers as a whole,<sup>12</sup> or if they affect the financial interests of a member of the supervisor's immediate family or an organization with which the supervisor is associated. This is consonant with

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<sup>9</sup> Section 19.42(2), *Wisconsin Statutes*, provides:

**19.42(2)** "Associated", when used with reference to an organization, includes any organization in which an individual or a member of his or her immediate family is a director, officer or trustee, or owns or controls, directly or indirectly, and severally or in the aggregate, at least 10% of the outstanding equity or of which an individual or a member of his or her immediate family is an authorized representative or agent.

<sup>10</sup> Section 19.42(7), *Wisconsin Statutes*, provides:

**19.42(7)** "Immediate family" means:

- (a) An individual's spouse; and
- (b) An individual's relative by marriage, lineal descent or adoption who receives, directly or indirectly, more than one-half of his or her support from the individual or from whom the individual receives, directly or indirectly, more than one-half of his or her support.

<sup>11</sup> Section 19.42(11), *Wisconsin Statutes*, provides:

**19.42(11)** "organization" means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, trust or other legal entity other than an individual or body politic.

See 1996 Wis Eth Bd 9, ¶6.

<sup>12</sup> An official may vote on a matter, even if the official has a financial interest in the matter, if the official's interest is no different from that of a large number of other individuals affected by the decision. See, e.g., 1992 Wis Eth Bd 32, ¶5; 11 Op. Eth. Bd. 9 (1989).

common law principles that a member of a legislative body is disqualified to vote on propositions in which he or she has a direct pecuniary interest.<sup>13</sup>

¶13 Section 19.59 does not bar a supervisor from participating in decisions affecting other municipalities or the taxpayers residing in those municipalities. However, we note that the Attorney General has said:

Public policy requires, that an office holder discharge his duties with undivided loyalty, therefore, in general terms, two offices are incompatible if there is a conflict of interest or duties, so that the incumbent of one office cannot discharge with fidelity and propriety the duties of both.

58 Op. Att’y Gen. 241, 247 (1968).

¶14 Moreover, §19.59 does not bar a supervisor from participating in decisions affecting family members who are not members of the supervisor’s immediate family. However, a public official owes a duty of undivided loyalty to the public whom he or she serves.<sup>14</sup> This duty may speak to a supervisor abstaining from participating in a decision if the supervisor believes a private interest could materially affect the supervisor’s judgment or adversely affect the image or effectiveness of the county decision-making process.

#### Advice

¶15 The Ethics Board advises

(1) that a county board supervisor not participate in discussions or votes about litigation strategy or whether or not the county should sue a business with which the supervisor is associated and should absent himself or herself from that portion of a meeting at which the matter is discussed;

(2) that §19.59 is not an impediment to a county supervisor’s participation in decisions affecting the liability of a municipality of which the supervisor is an

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<sup>13</sup> *The Board of Supervisors of Oconto County v. Hall*, 47 Wis. 208 (1879). As the Attorney General has said:

A pecuniary interest sufficient to disqualify exists . . . where it is one which is personal or private to the member, not such interest as he has in common with all other citizens or owners of property, nor such as arises out of the power of the [government] to tax his property in a lawful manner.

36 Op. Att’y Gen. 45 (1947). *See also* 1997 Wis Eth Bd 1; 1995 Wis Eth Bd 3; 67 C.J.S. Officers §204.

<sup>14</sup> 1994 Wis Eth Bd 6, ¶8; 1992 Wis Eth Bd 32, ¶3; 8 Op. Eth. Bd. 33 (1985); 63A Am. Jur. 2d, Public Officials and Employees §§321, 322.

elected official, but considerations of incompatibility of office, which may be addressed by the Attorney General, may speak to abstention; and

(3) that §19.59 is not an impediment to a county supervisor's participation in decisions affecting the financial interests of a child's spouse, unless the child's family either receives one-half of their support from the supervisor or furnishes one-half of the supervisor's support, but considerations of the appearance of impropriety may lead the supervisor to abstain.

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